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CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 529

NATIONAL LABOR RELATIONS BOARD

vs.

WHITE SWAN COMPANY

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

FILED OCTOBER 28, 1940

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SUPREME COURT OF THE UNITED STATES

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No. 529

NATIONAL LABOR RELATIONS BOARD

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WHITE SWAN COMPANY

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INDEX

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1 In the United States Circuit Court of Appeals, Fourth Circuit

No. 4666

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

WHITE SWAN COMPANY, RESPONDENT

On Petition for Enforcement of an Order of the National Labor Relations Board

Question certified to the Supreme Court of the United States by the Circuit Court of Appeals of the Fourth Circuit on the case stated.

Statement of facts

This is a petition for enforcement of an order of the National Labor Relations Board, which directed the White Swan Company, a corporation of Wheeling, West Virginia, engaged in the operation of a laundry and dry cleaning business, to cease and desist from certain unfair labor practices and to offer employment with back pay to certain employees held to have been discharged because of union affiliation and activities. The findings of the Board with respect to the unfair labor practices and discriminatory discharge of employees are sustained by substantial evidence; but a question has arisen, as to which the members of the Court are divided and in doubt, with respect to the jurisdiction of the Board in the premises.

The respondent, White Swan Company, operates a combined laundry and dry cleaning establishment in the city of Wheeling, West Virginia. While certain of its supplies are
2 obtained from without the state, the volume of the interstate business thus involved is not sufficient, in our opinion, to bring the business within the jurisdiction of the Board. The record shows that these supplies consist of soap, bluing, bleach, solvent, coal, water, paper, tape and padding, and that respondent's purchases thereof during 1938 amounted to $38,333.15, of which $10,810.90 came from without the state. Respondent, however, operates delivery trucks in Ohio as well as in West Virginia, three of the delivery routes from its plant being in Ohio and eleven in West Virginia. The business involved is necessarily of a purely local character, as the record shows that a radius of fifteen miles is the practical limit for a

laundry or dry-cleaning business in this territory. The fact that business is done in Ohio outside the state in which respondent's laundry is located, results from the fact that this purely local business is located in a city on a state line. Respondent transports garments in its trucks from those of its customers who reside in Ohio to its plant in West Virginia to be serviced, and then after servicing returns the garments in its trucks to the customers. Approximately 12.93 per cent of its gross income for 1938 was derived from this source. In addition thereto, approximately 5 per cent of its gross income during 1938 was derived from the servicing of garments which persons not in its employment collected in Ohio, brought to its plant for servicing and delivered in Ohio after they had been serviced. Respondent's total gross income in 1938 was $128,752.96. The total income from the business obtained from persons in Ohio during this period was $28,088.43.

We recognize that the collection and delivery of garments across state lines, as above described, constitutes interstate commerce. We are advertant, however, to the admonition of the court that in applying the act we are to bear in mind "the distinction between what is national and what is local in the activities of commerce." N. L. R. B. v. Jones & Laughlin (301 U. S. 1, 30). And although the letter of the National Labor Relations Act may cover such collections and deliveries in interstate commerce as are here involved, the question arises whether a proper interpretation of the Act, in view of the intent of Congress, would include them. Cf. United States v. Sorrells, 287 U. S. 435, 446. We are divided and in doubt as to whether such collection and delivery, which results from the fact that business of a local character, such as a laundry, is located on a state line, is sufficient to bring such business within the jurisdiction of the Board under the National Labor Relations Act. To so hold would be to bring under the jurisdiction of the Board a great variety of businesses of purely local character simply because they maintain a delivery service in cities located on state lines. As there are many such cities in the United States, the question seems to us one of sufficient importance to justify us in certifying it to the Supreme Court so that it may be definitely settled.

3

Being divided and in doubt, therefore, this Court respectfully certifies to the Supreme Court of the United States, for its instruction and advice, the following questions of law, the determination of which is indispensable to a proper decision of the case.

Questions

1. Should the National Labor Relations Act be interpreted as having application to a business of purely local character, such as a laundry, merely because such business is located in a city on a state line and derives a substantial portion of its income from business which involves collections or deliveries of articles in a state other than that in which the business is located?

2. Where a local business, such as a laundry, is located in a city on a state line, and is not engaged in interstate commerce, except in so far as it may collect articles to be serviced and may make deliveries to customers living across the state line, is such business, by reason of such collections and deliveries,
4 deemed engaged in "commerce" within the meaning of Subsection 6 of Section 2 of the Act of July 5, 1935, ch. 372, 29 U. S. C. A. 152 (6), so that an unfair labor practice on its part would be an unfair labor practice "affecting commerce" within the meaning of Subsection 7 of said section (29 U. S. C. A. 152 (7)) and Subsection (a) of Section 10, 29 U. S. C. A. 160 (a)?

JOHN J. PARKER,
U. S. Circuit Judge.

MORRIS A. SOPER,
U. S. Circuit Judge.

ARMISTEAD M. DOBIE,
U. S. Circuit Judge.

[Endorsed:] Filed and Entered October 26, 1940. Claude M. Dean, Clerk, U. S. Circuit Court of Appeals, Fourth Circuit.

6 [Clerk's certificate to foregoing paper omitted in printing.]

[Endorsement on cover:] Certificate. File No. 44878. U. S. Circuit Court of Appeals, Fourth Circuit. Term No. 529. National Labor Relations Board vs. White Swan Company. Filed October 28, 1940. Term No. 529 O. T. 1940.

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IN UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT

No. 4666

NATIONAL LABOR RELATIONS BOARD, PETITIONER

versus

WHITE SWAN COMPANY, RESPONDENT

Order denying amendment of certificate

A motion has been made by the Solicitor General that this Court amend the certificate heretofore made to the Supreme Court of the United States by certifying to that Court a question which would embody the purchase of a portion of its supplies in interstate commerce as well as the fact that it derives a substantial portion of its income from business which involves collections and deliveries in interstate commerce. We are clearly of opinion, however, as stated in our certificate, that the volume of interstate business involved in the purchase of supplies is not sufficient to bring the business of respondent within the jurisdiction of the Board. And, if it be held that the fact that respondent derives a substantial portion of its income from business which involves collections and deliveries in a state other than that in which the business is located does not confer jurisdiction on the Board under the Act, we are of opinion that the Board was without jurisdiction. The amount of income derived from the business involving such collections and deliveries is undoubtedly a substantial amount of the income of respondent however; and our doubt is concerned with the nature of the business involved in the collections and deliveries and the application of the Act thereto, not as to the substantial nature of the income derived therefrom. The only questions as to which we are divided and need instruction and advice are those which we have certified. When these are answered we can proceed to decide the case.

Adding to the question the element involved in the purchase of supplies would confuse the question as to which instruction is desired and would not aid in its solution. If the business of collecting and delivering articles in the manner stated in the questions brings the business of respondent within the Board's jurisdiction, the purchase of supplies does not increase the juris-

diction: if it does not, such purchase, in our opinion, cannot confer jurisdiction. The case is not one of aggregating different elements upon which a finding of jurisdiction may be based; but of determining whether one of the elements tends to furnish any basis of jurisdiction.

Nothwithstanding what we have said above, we would certify the question suggested by the Solicitor General, but for the fact that to do so would be to certify to the Supreme Court the entire jurisdictional feature of the case before us and ask the Court's decision on that feature of the case. This we may not do. We have certified the facts. We have asked advice as to the only question upon which we entertain doubt. If the Court prefers to pass upont he case before us as embodied in the question proposed by the Solicitor General, it has full power to bring the case before it by certiorari.

For the reasons stated the motion to amend the certificate will be denied.

Done at Charlotte, N. C., January 10, 1941.

JOHN J. PARKER,
U. S. Circuit Judge.
MORRIS A. SOPER,
U. S. Circuit Judge.
ARMISTEAD M. DOBIE,
U. S. Circuit Judge.

A true copy.
Teste:
[SEAL]
CLAUDE M. DEAN, *Clerk,*
U. S. Circuit Court of Appeals, Fourth Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1941

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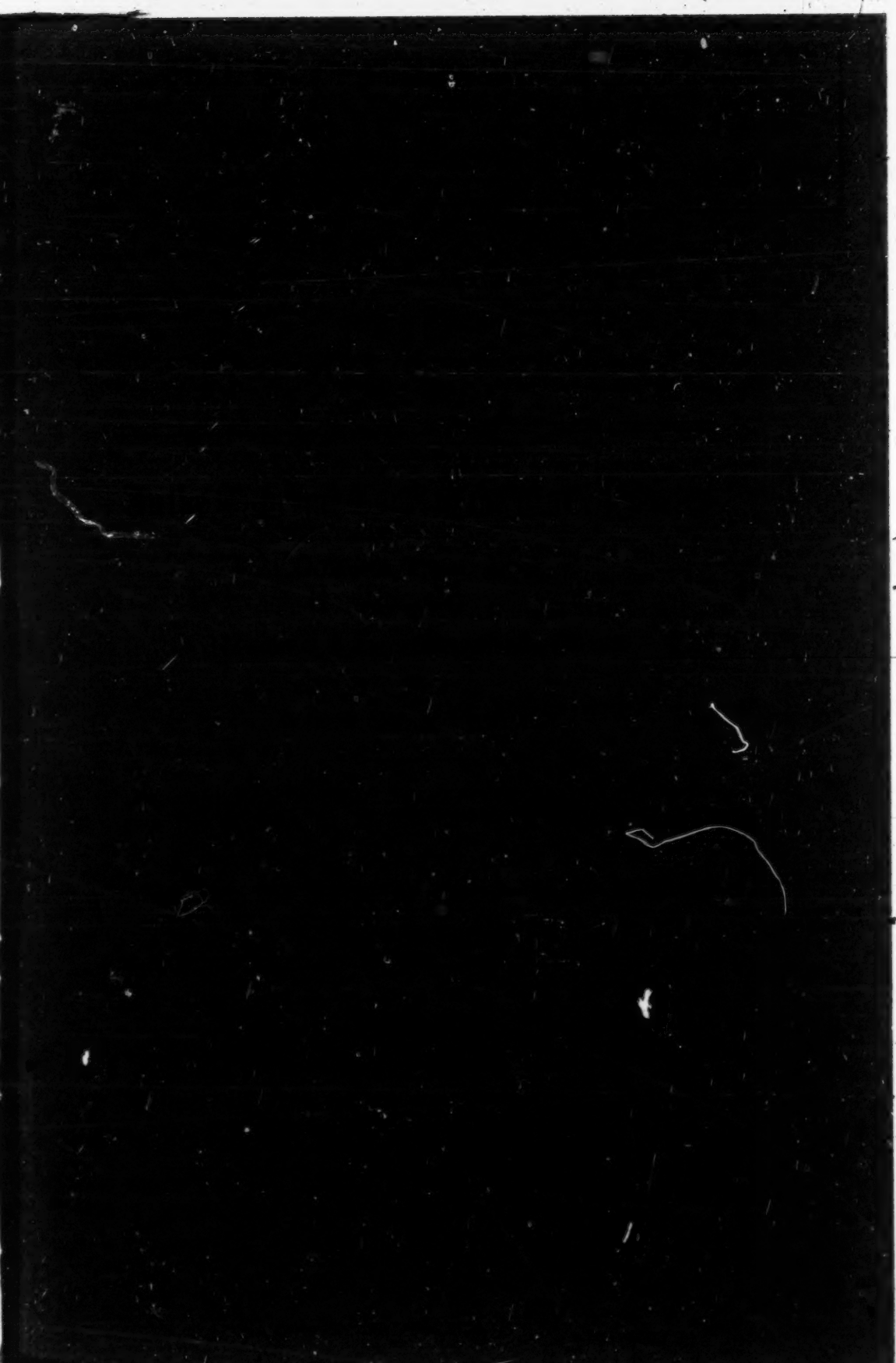

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INDEX

CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 529

NATIONAL LABOR RELATIONS BOARD

v.

WHITE SWAN COMPANY

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The findings of fact, conclusions of law, and order of the National Labor Relations Board are not yet reported in permanent form; they are presently available in advance sheet form (19 N. L. R. B., No. 112) and are reproduced in Appendix A, *infra*, pp. 27–28.

JURISDICTION

The certificate of the Circuit Court of Appeals was filed in this Court on October 28, 1940. The

jurisdiction of this Court rests upon Section 239 of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS CERTIFIED

"1. Should the National Labor Relations Act be interpreted as having application to a business of purely local character, such as a laundry, merely because such business is located in a city on a state line and derives a substantial portion of its income from business which involves collections or deliveries of articles in a state other than that in which the business is located?"

"2. Where a local business, such as a laundry, is located in a city on a state line, and is not engaged in interstate commerce, except insofar as it may collect articles to be serviced and may make deliveries to customers living across the state line, is such business, by reason of such collections and deliveries, deemed engaged in 'commerce' within the meaning of Subsection 6 of Section 2 of the Act of July 5, 1935, ch. 372, 29 U. S. C. A. 152 (6), so that an unfair labor practice on its part would be an unfair labor practice 'affecting commerce' within the meaning of Subsection 7 of said section (29 U. S. C. A. 152 (7)) and Subsection (a) of Section 10, 29 U. S. C. A. 160 (a)?"

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in Appendix B, *infra*, p. 29.

STATEMENT

The National Labor Relations Board petitioned the court below for enforcement of an order against the White Swan Company, a West Virginia corporation, to cease and desist from certain unfair labor practices and to offer reinstatement with back pay to certain employees found to have been discharged for union activity. The court below states in its certificate (p. 1) that the findings of the Board with respect to the unfair labor practices and discriminatory discharges are sustained by substantial evidence, and expresses doubt only as to the jurisdiction of the Board. The facts set forth in the certificate (pp. 1–2) may be summarized as follows:

The Company operates a combined laundry and dry cleaning establishment in the city of Wheeling, West Virginia. It collects and delivers garments for its customers, and in this connection maintains a fleet of delivery trucks. Three of the delivery routes from its plant are in Ohio, the remaining eleven being in West Virginia. A radius of fifteen miles is the practical limit for a laundry or dry cleaning business in this territory.

Approximately 18 percent of the Company's 1938 gross income was derived from the servicing of garments for customers residing in Ohio: about 12.93 percent with respect to garments transported to and from the Company's plant in its own trucks, and about 5 percent with respect to

garments which persons not in its employ collected in Ohio, brought to its plant for servicing and then delivered in Ohio. Thus, the Company's 1938 gross income was $128,752.96, of which $23,088.43 [1] was attributable to its Ohio business.

In the operation of its plant, the Company uses various supplies, consisting of soap, bluing, bleach, solvent, coal, water, paper, tape, and padding. During 1938, it expended $38,333.15 for such supplies, of which $10,810.90 was allocable to supplies obtained from without West Virginia.

The court below states that the Company's purchase of supplies from without the state is not sufficient to confer jurisdiction upon the Board (p. 1). But it recognizes that the collection and delivery of garments across state lines does constitute interstate commerce, and it seeks the instruction of this Court only upon whether Congress *intended* the Board to have jurisdiction with respect to such interstate commerce, which it describes as "local" in character.

Upon certification, the Solicitor General filed a motion in the court below, asking that the certificate be amended. He pointed out that the Board, in its findings (pp. 27–28, *infra*), had rested its jurisdiction upon the out-of-state purchases as well as upon the Company's activities with respect to its Ohio customers, and contended that it was inap-

[1] The certificate inadvertently states the amount to be $28,088.43 (p. 2).

propriate for the court to segregate the constituent elements supporting the Board's jurisdiction. He therefore requested the court below to amend its certificate, so as to place before this Court the entire basis upon which the Board rested its jurisdiction (see note 13, p. 24, *infra*). The court denied the motion, but at the same time reaffirmed its previous conclusion that the Company's income from collections and deliveries beyond the state is "substantial" and stated that it merely wished to be instructed as to whether jurisdiction can be supported by such activities (Certificate, pp. 5–6).[2]

SUMMARY OF ARGUMENT

I

The Company is directly and substantially engaged in interstate commerce by reason of its collection, servicing, and delivery of garments which pass to and from its plant in such commerce. The Circuit Court of Appeals did not doubt, and it is clear, that the Act may be constitutionally applied to the Company. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197; *National Labor Relations Board* v. *Fain-*

[2] The order of the court denying amendment of the certificate has been printed and is annexed to the certificate (pp. 5–6).

blatt, 306 U. S. 601; *National Labor Relations Board* v. *Bradford Dyeing Ass'n,* 310 U. S. 318. The only question raised is whether the Act should be limited in application to less than its apparent and permissible scope for the supposed reason that Congress did not intend it to apply to a business described by the court as "purely local" in nature. *United States* v. *Sorrells,* 287 U. S. 435, 446. But the Act on its face evidences a legislative purpose to exercise the full power of Congress under the commerce clause. *Fainblatt* case, *supra.* The legislative history confirms this intent. And there is no basis for an inference that Congress intended to exclude from the Act substantial interstate commerce merely because it is carried on within a limited area.

The fear expressed by the court below, that if the Board's jurisdiction is sustained in this case, the Act may be applied to many "businesses of purely local character," is groundless. The Board does not apply the Act to entire industries but to particular employers. Each case must be determined as it arises. *Jones & Laughlin* case, *supra; Santa Cruz* case, *supra.*

Nor is the Company's business "purely local." The Company is directly engaged in interstate commerce. The fact that it constitutes a unit of the power laundry and cleaning and dyeing business does not lend it "local character" for purposes of the National Labor Relations Act. That

industry, presumably, occasions large amounts of commerce among the several States, which commerce is subject to disruption by industrial strife. There is no indication that Congress intended to exclude that commerce from the protection afforded interstate commerce generally.

II

Because of the unusual posture of this case, if the questions certified are not answered in the affirmative, the certificate should be dismissed without answer to the questions. The questions certified "are not raised by the case made * * *." *Seim* v. *Hurd,* 232 U. S. 420, 427. The Board based its jurisdiction upon the aggregate effect of unfair labor practices upon (a) the commerce involved in the Company's receipt of materials and supplies and (b) the commerce involved in the Company's collection, servicing, and delivery of garments. The questions certified confine this Court's consideration to the effect upon the second type of commerce alone.

The Circuit Courts of Appeals have uniformly held that the threat of obstruction to incoming commerce supports the Board's jurisdiction. And the volume of such commerce in this case far exceeds "that to which courts would apply the maxim *de minimis.*" *Fainblatt* case, *supra.* Moreover the application of the Act should depend upon whether the aggregate effect of an industrial dis-

pute upon all the interstate commerce in which the Company is engaged would be substantial. That is the basis upon which the Board considered and disposed of the question. The Circuit Court of Appeals should not be permitted to require consideration of the issue by this Court upon a different basis from that upon which the Act was applied by the administrative agency.

An affirmative answer to the questions certified will be appropriate, procedurally, since such an answer would dispose of the entire controversy. But a negative answer would not be appropriate since it would leave open the question presented concerning the application of the Act.

ARGUMENT

I

BY REASON OF ITS COLLECTION, SERVICING AND DELIVERY OF GARMENTS WHICH PASS TO AND FROM ITS PLANT IN INTERSTATE COMMERCE, THE COMPANY IS SUBSTANTIALLY ENGAGED IN SUCH COMMERCE AND IS, THEREFORE, SUBJECT TO THE ACT

About 18 per cent of the Company's gross revenue, or some $24,000 per year, is derived from servicing operations performed upon garments which are brought to its plant in interstate commerce and which, after being serviced, are redelivered in such commerce to the owners. More than two-thirds of the continuous interstate transportation which this business involves is accom-

plished in the Company's own trucks; the remainder is carried on by independent route operators who collect the articles in Ohio, bring them to the plant in West Virginia, and later redeliver them in Ohio. This substantial flow of interstate commerce to and from the Company's plant is occasioned only by the plant's existence and will continue only while its operations do.

The court below correctly recognized that "the collection and delivery of garments across state lines, as above described, constitutes interstate commerce" (p. 2). And it noted further that such interstate business in this case is "substantial" in amount (pp. 3, 5). It suggests not the slightest doubt that Congress has power to confer jurisdiction upon the Board in these circumstances. Nor could any such doubt be entertained, since the stoppage of the Company's operations through industrial strife would result in the interruption of a "substantial" amount of interstate commerce, which Congress may undertake to protect by removing the threat of such interruption at the outset. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41–43; *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453, 464–465; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 221–222; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 604–605; *National Labor Relations Board* v. *Bradford*

Dyeing Ass'n, 310 U. S. 318, 326.[3] And since the volume of the Company's commerce is, as the court below conceded, "substantial," it is plainly "more than that to which courts would apply the maxim *de minimis.*" *Fainblatt* case, *supra,* p. 607.

Thus, this case reduces itself to a narrow compass. No question is here presented as to the scope of Congressional power under the commerce clause. The sole question is as to whether Congress has exercised that power so as to give the Board jurisdiction, i. e., whether, as a matter of statutory construction, Congress intended the National Labor Relations Act to apply in the situation here presented. The court below recognizes that (p. 2) "the letter of the National Labor Relations Act may cover such collections and deliveries in interstate commerce as are here involved," but nevertheless queries whether the Act should not be construed to exclude such interstate commerce. It refers to *United States* v. *Sorrells,* 287 U. S. 435, 446, which suggests the propriety of judicial relaxation of the literal application of a statute where such an application would plainly run counter to the legislative purpose. Cf. *Holy Trinity Church* v. *United States,* 143 U. S. 457; but cf. *Caminetti* v.

[3] See also, *National Labor Relations Board* v. *Hopwood Retinning Co., Inc.,* 98 F. (2d) 97 (C. C. A. 2d); *National Labor Relations Board* v. *National New York Packing & Shipping Co., Inc.,* 86 F. (2d) 98 (C. C. A. 2d).

United States, 242 U. S. 470. By describing the business here involved as "local," the court seems to indicate that there may be room for judicial construction, eliminating from the scope of the Act that which is literally covered thereby and which is plainly within the competence of Congress.

We respectfully submit that not only is there no occasion to go behind the plain language of the statute, as was done in such exceptional situations as the *Sorrells* case, but that even if such an examination be pressed, it will conclusively appear that the intention of Congress accords with the language employed.

The broad sweep of the provisions in Section 2 (6) and (7) of the Act (*infra*, p. 29), indicates a Congressional purpose to afford protection to all interstate commerce. There is no basis whatever for supposing that Congress meant to withhold such protection from interstate commerce of a substantial nature merely because it is conducted within a limited geographical area. Indeed, the commerce here under review, involving as it does continuous movement across the state line, is interstate commerce in its primary and most elementary sense, and it therefore seems impossible to believe that Congress intended to exclude such activities from the Act without making its purpose explicit. As this Court has held in the *Fainblatt* case (306 U. S. at 607), "the Act on its face * * * evidences the intention of

Congress to exercise whatever power is constitutionally given to it to regulate commerce * * *."

Even were the question of legislative intent still open, however, there is no color of authority or reason for an inference that Congress intended to exclude from protection against the injurious effects of industrial strife interstate commerce of a substantial nature merely because it is carried on within a restricted area, a factor which does not diminish the national interest in the unobstructed flow of such commerce. It is clear that Congress sought to relieve all interstate commerce of the burdens caused by labor disputes, not merely portions thereof selected without reference to any just conception of the national interest. Unless the limited geographic aspect of the business renders the Company's commerce unsubstantial or deprives it entirely of the nature of interstate commerce, which it plainly and concededly does not in this case, there can be no doubt of the legislative intent.

Further, it is apparent that an enterprise whose interstate operations are carried on within a relatively small area, may nevertheless be engaged in, or cause others to conduct, interstate commerce which far exceeds, by every standard, the materials and products crossing state lines to or from a manufacturing or processing plant of the type to which this Court has held the Act applicable. The interpretation which the Circuit Court of Ap-

peals suggests, therefore, necessitates an inference that Congress intended to protect commerce from the lesser burden but not from the greater, to grant this Company immunity from the Act while subjecting to it smaller businesses engaged to a lesser extent in interstate commerce.

Thus, it seems plain that the general congressional purpose is in accord with the broad language of the statute, and in view of the unambiguous declaration in the *Fainblatt* case as to the scope of the statute, it would seem that a more detailed inquiry into the legislative intent should be foreclosed. But even if the legislative history be explored, it will be found to confirm the result rather than to cast doubt upon it.

The reports of both the Senate and House committees which considered the bill that ultimately became the National Labor Relations Act, shed considerable light upon the intent of Congress. They disclose with unmistakable clarity that the Act was intended to afford protection to all commerce within the ambit of congressional power. The Senate committee unambiguously states (S. Rep. No. 573, 74th Cong., 1st Sess., p. 18):

> Cases under the antitrust laws, cited for the proposition that the Federal Government cannot deal with the employer-employee relationship, are not in point. They turned not on any question of constitutional limitations, but upon statutory construction of the extent of equity jurisdiction over

> labor activities under the antitrust laws. But the Federal Government has power to prevent burdens upon interstate commerce that reach beyond the intent of those laws in regard to labor disputes, and *it is intended in this bill to exercise the full constitutional power of Congress* to prevent the described unfair labor practices, which have no extenuating social values operating in their favor. [Italics supplied.]

Again, at p. 19 of the same report, the committee declares:

> While this bill of course does not intend to go beyond the constitutional power of Congress, as that power may be marked out by the courts, it seeks the full limit of that power in preventing these unfair labor practices. * * *

The House committee similarly made it clear that it understood the scope of the Act to be coextensive with the power of Congress under the Constitution (H. Rep. No. 1147, 74th Cong., 1st Sess., p. 7):

> These prohibitions, and the substantive rights, are made applicable, to the extent of Congress' power under the commerce clause, to employers and employees irrespective of whether the industry in question is subject to a code of fair competition.

In these circumstances, it would seem idle to contend that an exception should be grafted upon the plain language of the statute which is rich in

legislative history showing that such an exception was not intended. We therefore respectfully submit that the conclusion reached by this Court in the *Fainblatt* case as to scope of the Act calls for no limitation and should be followed here.

In the certificate the court states that the questions certified concern a "business of a local character, such as a laundry" and expresses the fear that an affirmative answer to the questions will result in application of the Act to "a great variety of businesses of purely local character * * *" (p. 2). This approach, we believe, reveals a fundamental misapprehension concerning the nature of the issue presented. The question should not be viewed as if it arose from or involved application of the Act to an entire industry or to all businesses of a particular type. In each case the Board applies the Act to a particular enterprise and the question before the court is whether the relation between that enterprise and interstate commerce is such as to support the Board's jurisdiction. The business of an employer who is directly and substantially engaged in interstate commerce may not be described as a "purely local" business, and there is no sound basis for an apprehension that sustaining the Board's jurisdiction over his enterprise will bring within the compass of the Act other employers who are engaged in the same industry or similar industries but whose busi-

nesses are in truth "purely local." The requisite "close and intimate" relation to commerce "is left by the statute to be determined as individual cases arise." *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 32. The process of decision "in maintaining the balance of the constitutional grants and limitations" is necessarily a "gradual process of inclusion and exclusion." *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453, 467. "And what is reasonably clear in a particular application is not to be overborne by the simple and familiar dialectic of suggesting doubtful and extreme cases" (*ibid.*).

But even if the industry as a whole be examined, it will appear that it gives rise to a substantial amount of interstate commerce and that neither the industry as a whole nor the business of this Company can be characterized as "purely local," as was done by the court below. The familiar hand laundry of former years has been largely replaced by establishments of considerable magnitude engaged in power laundering and the cleaning and dyeing of garments.[4] While we have found no available statistics concerning the amount of commerce to which these large servicing units give rise, some indica-

[4] During the year 1929 about 6,800 "power" laundries furnished employment to more than 233,000 employees and received a gross income in excess of $541,000,000, while over 5,000 cleaning and dyeing establishments employed some 60,000 persons and had receipts totaling over $201,000,000. U. S. Dept. of Commerce, Bureau of the Census, *Biennial Census: 1935, Power Laundries* (1937), p. 4, and

tion is afforded by the fact that during 1935, some 1,267 power laundries doing a business in excess of $128,000,000 operated in 23 metropolitan areas in the United States which comprise territory in more than one state.[5] Presumably, the amount of in-

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Cleaning and Dyeing Establishments, Rug Cleaning Establishments (1937), p. 3. These figures concern only establishments doing a gross business in excess of $5,000 per year. They also exclude the considerable number of such establishments which failed to file reports with the Bureau of the Census. "According to the Department of Commerce, the laundry industry in 1935 ranked *sixth* in total number of workers and *thirty-first* in sales volume when compared with 300 other industries included in the census survey." *The Power Laundry is a Major Industry*, in *Laundry Age* (April 1938), p. 54.

The individual units of the industry are large, the average receipts per unit being almost $80,000 in 1929 and 1,485 establishments reporting receipts in excess of $100,000 during that year. U. S. Department of Commerce, Bureau of the Census, *Census of Manufactures: 1931, Power Laundries, Drycleaning and Redyeing Establishments* (1933), p. 9. During 1935, the receipts of 983 establishments totalled $203,000,000 and the 6,470 power laundries which reported did a gross business of $369,452,459 as compared with the $42,073,000 business done by 16,826 hand laundries. U. S. Department of Commerce, Bureau of the Census, *Biennial Census: 1935, Power Laundries* (1937), pp. 4, 12, and *Census of Business, 1935, Service Establishments* (1937), vol. II, p. 1. The increase in the amount of capital required for an efficient plant has led to consolidations and the establishment of large chains, increasing the size of the average unit. U. S. Department of Labor, Women's Bureau, "*A Survey of Laundries and Their Women Workers in 23 Cities*," Bulletin No. 78 (1930), pp. 3–4; *History of an Industry*, in *Laundry Age* (June 1939), pp. 6–7.

[5] U. S. Dept. of Commerce, Bureau of the Census, *Biennial Census: 1935, Power Laundries* (1937), pp. 7–9; see U. S. Dept. of Commerce, Bureau of the Census, *Fifteenth Census of the United States, Metropolitan Districts, Popu-*

terstate commerce so occasioned is great, and by reason of the nature of the business constitutes a regular and continuous flow of commerce among the states. A negative answer to the questions herein would remove from the scope of the Act this considerable amount of interstate commerce, with respect to which Congress undoubtedly had power to legislate.

Extensively organized on both the employers' and employees' side into nation-wide associations [6] and trade unions,[7] the laundry and dry cleaning industry has a long history of frequent and bit-

lation and Area, 1932, *passim*. These multi-state metropolitan areas constitute more than one-fourth of all the metropolitan areas in the United States as defined by the Bureau of Census (*ibid.*). In the New York area one of the largest laundry and dry-cleaning establishments serves customers in New York, Connecticut, and New Jersey within its 35-mile service area. *Annual Report to Securities and Exchange Commission of Consolidated Laundries Corporation*, April 27, 1940.

[6] 2,300 power laundries in the United States and Canada, handling 80 percent of the industry's entire volume, are members of The American Institute of Laundering (*Laundry Age*, October 1939, p. 3; *Laundry Age Yearbook*, 1938, p. 131). The Laundryowners' National Association represented the industry in developing the N. R. A. code and was said to embrace 82 percent of the power-laundry business in the country. United States Department of Labor, Women's Bureau, *Factors Affecting Wages in Power Laundries*, Bulletin No. 143, 1936, p. 10. United action in dealing with labor is common. *Laundry Age*, the leading national trade journal, has "repeatedly pled for a united front by laundry owners wherever they are threatened by unreasonable demands from the unions." *United Front Stops Strikes*, in *Laundry Age* (January 1938), pp. 96–97.

[7] The two national unions in the laundry industry—the Laundry Workers' International Union, affiliated with the

terly contested strikes, some interstate in scope.[8] There is no indication that Congress intended, for some reason that is not readily apparent, to permit a large and important portion of the nation's trade to remain subject to interruption by industrial strife arising from practices which the Act proscribes. Where Congress has intended an even less extensive exemption of this nature, it has plainly so stated. See *e. g.*, the Fair Labor

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American Federation of Labor, and the Laundry Workers Joint Board (Amalgamated Clothing Workers of America), affiliated with the Congress of Industrial Organizations—have a combined membership of about 70,000 workers, almost one-third of all laundry employees. See *Laundry Workers' International Union in Convention*, Denver, Colorado, May 15, 1939; *Report of the Executive Council of the American Federation of Labor to the Sixtieth Annual Convention*, November 18, 1940, and *Documentary History, Amalgamated Clothing Workers of America: 1936–1938*, p. 35; *id., 1938–1940*, pp. 89–91.

[8] To cite but a few instances, in the greater Cincinnati metropolitan area, which includes North Kentucky, 2,000 laundry and dry-cleaning employees in 19 plants and 6 branches, struck for 13 weeks beginning September 28, 1937. The dispute was settled by a contract signed by 35 companies, including 5 Kentucky firms. *Cincinnati Post*, Kentucky Edition, Sept. 28 and 29, 1937, and *Cincinnati Enquirer*, Sept. 30, 1937, December 27, 1937. Of 12 interstate strikes in progress in October 1937 this was the second largest. See U. S. Bureau of Labor Statistics, *Monthly Labor Review*, February 1938, p. 440. In the New York metropolitan area, a strike called in September 1937, originally directed against three large dry-cleaning chains comprising 95 stores in New York and affecting about 6,000 workers, spread to the New Jersey plants in which the actual servicing of the garments was done. This strike was the largest of 15 interstate strikes in progress at the time.. See U. S. Bureau of Labor Statistics, *Monthly Labor Review*, January

Standards Act of 1938, Sec. 13 (a) 2.[9] And statutes containing no such exemption but, on the contrary, purporting to exercise the federal power over commerce generally, have not been held to exclude certain portions of such commerce merely because those portions were carried on wholly within areas of relatively small size. *Kansas City Western Ry. Co.* v. *McAdow,* 240 U. S. 51 (Employers' Liability Act); *Spokane & Inland R. Co.* v. *United States,* 241 U. S. 344 (Safety Appliance Act); *Ellis* v. *Inman, Poulsen & Co.,* 131 Fed. 182 (C. C. A. 9th) (Sherman Anti-Trust Act); *Fehr Baking Co.* v. *Bakers Union,* 20 F. Supp. 691 (W. D. La.) (same).[10]

II

IF THE QUESTIONS CERTIFIED ARE NOT ANSWERED IN THE AFFIRMATIVE, THE CERTIFICATE SHOULD BE DISMISSED WITHOUT ANSWER TO THE QUESTIONS

In the event that the Court determines that the probable effect of industrial strife upon the interstate commerce in garments serviced by the

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1938, p. 176; *N. Y. World Telegram*, September 13 and 14, 1937, and *New York Times*, September 15, 1937. More recently (March 14, 1940), a strike stopped completely the operations of a laundry and dry-cleaning company having its plant in New Jersey and 103 stores in New York. See Paterson *Call* and Newark *Call* during this period.

[9] Act of June 25, 1938, 52 Stat. 1060, 29 U. S. C., Supp. V, Sec. 213 (a) (2). That section provides that the wage-and-hour provisions of the statute shall not apply to "any employee engaged in any * * * service establishment, the greater part of whose * * * servicing is in intrastate commerce * * *."

[10] See, also, the following decisions of the Interstate Commerce Commission involving the conduct of interstate trans-

Company does not alone warrant application of the Act, we submit that the questions certified should not be answered but that the certificate should be dismissed. The questions, as put, do not comprehend all of the relevant facts upon which the Board concluded that the Company's unfair labor practices tend to lead to labor disputes affecting substantial interstate commerce; the questions, therefore, "are not raised by the case made * * *." *Seim* v. *Hurd*, 232 U. S. 420, 427. *Cf. United States* v. *Worley*, 281 U. S. 339, 340; *Graver* v. *Faurot*, 162 U. S. 435, 437; *Jewell-LaSalle Realty Co.* v. *Buck*, 283 U. S. 202, 209; *Wilshire Oil Co., Inc.*, v. *United States*, 295 U. S. 100, 102–103; *Hertz* v. *Woodman*, 218 U. S. 205, 211; *Lowden* v. *N. W. National Bank*, 298 U. S. 160.

In determining the substantiality of the effect upon interstate commerce which would be produced by a stoppage of the Company's operations, the Board could plainly consider the aggregate effect upon *all* such commerce which would be directly obstructed. The Board found that this commerce was of two types: (a) commerce in purchasing materials and supplies; and (b) commerce involved in the Company's collection, servicing, and delivery of garments. The sum effect upon commerce of both kinds constituted the sin-

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portation within relatively small areas: *In the Matter of Steubenville, etc., Traction Co.*, 64 I. C. C. 517 (Motor Carrier Act of 1935); *In the Matter of City of Bristol* v. *Virginian Ry. Co.*, 15 I. C. C. 453 (Interstate Commerce Act).

gle basis of the Board's jurisdiction. Conceivably, the Board may have believed that the effect upon either type of commerce was not in itself substantial, but that the aggregate effect was such as to warrant or require a conclusion that the jurisdictional prerequisites were satisfied in this case.

The question before the Circuit Court of Appeals as to application of the Act, therefore, concerned a business whose stoppage would produce the total effect upon interstate commerce which the Board's findings reflect. But the court, while reciting in the certificate (p. 1) the facts concerning the Company's receipt of materials and supplies, has certified questions which confine consideration by this Court to the effect of an interruption of the Company's business upon the commerce involved only in its collection, servicing, and delivery of garments. The questions in terms relate to an enterprise whose only connection with interstate commerce purports to be that which is stated in the questions.[11]

The Circuit Courts of Appeals for the Sixth, Ninth and Tenth Circuits, as well as the court below, have held that the threat of obstruction to interstate commerce in materials and supplies arising from labor disputes in the state of destination

[11] Question 1 inquires whether the Act applies "merely because" of the location of the business and its servicing of articles collected in or delivered to points in other States. Question 2 is as to a business "not engaged in interstate commerce, except insofar as it may collect articles to be serviced and may make deliveries to customers living across the state line * * *" (Certificate, p. 3).

warrants application of the Act.[12] There are no contrary decisions. The "familiar principle" invoked by the Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 31–32, that obstructions to interstate commerce are within the reach of the Congressional power, would seem to recognize no distinction between effects upon incoming or outgoing commerce, or effects upon both. The Circuit Court of Appeals in this case excluded the recognized effects of the Company's unfair labor practices upon its incoming commerce from consideration by this Court on the bare ground that "the volume of the interstate Commerce thus involved is not sufficient, in our opinion, to bring the business within the jurisdiction of the Board" (Certificate, p. 1).

We believe that the volume of commerce in supplies—$10,810 during 1938, or 28% of the Company's total purchases of supplies during that year (Certificate, p. 1)—comprises commerce of an

[12] *Newport News Shipbuilding & Dry Dock Co.* v. *National Labor Relations Board*, 101 F. (2d) 841, 843 (C. C. A. 4), modified and affirmed, 308 U. S. 241; *National Labor Relations Board* v. *A. S. Abell Co.*, 97 F. (2d) 951, 955 (C. C. A. 4); *National Labor Relations Board* v. *Norfolk Shipbuilding & Drydock Corp.*, 109 F. (2d) 128, 129 (C. C. A. 4); *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 115 F. (2d) 414, 416 (C. C. A. 4); *Consumers Power Co.* v. *National Labor Relations Board*, 113 F. (2d) 38, 40–41 (C. C. A. 6); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 784 (C. C. A. 9), certiorari denied, No. 352, this Term, January 13, 1941; *Southern Colorado Power Co.* v. *National Labor Relations Board*, 111 F. (2d) 539, 543 (C. C. A. 10).

amount substantially "more than that to which courts would apply the maxim *de minimis.*" *Fainblatt* case, 306 U. S. at 607. The significant fact, however, is that there is no need for the effect upon incoming commerce to be substantial in itself in order for it to be relevant to a determination whether the Company is subject to the Act. The effect upon incoming commerce is one element making up an aggregate effect; the decisive question is whether the aggregate effect is substantial, not whether each of the component effects in itself satisfies that test. The Circuit Court of Appeals rejected the view that the Board might base its conclusion that the Act did or did not apply upon the total effect of a stoppage of operations upon interstate commerce; in its order denying the Board's motion to amend the certificate, the court stated that (Certificate, p. 6)—

> The case is not one of aggregating different elements upon which a finding of jurisdiction might be based; but of determining whether one of the elements tends to furnish any basis of jurisdiction.[13]

[13] In the motion to amend the certificate, the Solicitor General suggested that the following question was appropriate for certification: "Does the National Labor Relations Act apply to a laundry and cleaning and dyeing establishment which, during 1938, the year concerning which evidence was adduced, received $10,810.90 worth of materials and supplies in interstate commerce, out of total purchases of this kind amounting to $38,333.15, and, of its gross income of $128,752.96 during that year, derived $28,088.43 from the servicing of garments collected from and delivered to points in a State other than that in which the plant is located?"

It would have been quite possible for the Board to consider the case as involving two separate questions whether the Company is subject to the Act by reason (a) of its interstate purchases, and (b) of its servicing of garments collected and delivered in other States. We submit, however, that where the Board has viewed as a single issue whether the effects upon interstate commerce of a labor dispute in a particular business are such in the aggregate as to bring the business within the Act, and this view is proper under the Act, the Circuit Court of Appeals should not be permitted, upon a patently unsound ground, to require consideration of the issue by this Court upon a different basis from that upon which the Act was applied by the administrative agency.

It should be observed that it would be appropriate, procedurally, for the Court to answer the certified questions in the affirmative, for such answers would be dispositive of the controversy. On the other hand, if negative answers should be given, there would still be left open the question whether both types of activity in the aggregate furnish a basis for the Board's jurisdiction, notwithstanding that neither alone may be sufficient for that purpose. And since the Board rested its jurisdiction upon both grounds taken together, rather than alternatively, it would seem inappropriate for this Court to decide that one of those grounds, standing alone, is insufficient. Accord-

ingly, we respectfully submit that the questions certified can and should be answered in the affirmative, but that, because of the unusual posture of this case, if affirmative answers cannot be given, the certificate should be dismissed.

CONCLUSION

It is respectfully submitted that the questions certified by the Circuit Court of Appeals for the Fourth Circuit should be answered in the affirmative, but that, if such answers may not be returned, the certificate should be dismissed without answer to the questions.

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FEBRUARY 1941.

APPENDIX A

The Board's findings of facts and conclusions of law concerning the applicability of the Act to the Company's business are as follows (19 N. L. R. B., No. 112):

FINDINGS OF FACT

1. THE BUSINESS OF THE RESPONDENT [1]

White Swan Company is a West Virginia corporation having its office and plant at Wheeling, West Virginia. It operates a combined laundry and dry cleaning establishment. The essential supplies and equipment used by the respondent in its operations are soap, bluing, bleach, cleaning solvent, coal, water, salt, paper, tape, and padding. During 1938 the respondent purchased supplies and materials costing $38,333.15. Approximately 28.2 percent, or $10,810.90 by value, of its supplies and equipment were shipped to the respondent's plant from points outside the State of West Virginia. The respondent's gross income during the same period was $128,752.96. The respondent transports garments in its trucks from customers in Ohio to the respondent's plant in West Virginia to be serviced. After they are serviced, the respondent delivers the garments in its trucks to the customers in Ohio. Approximately 12.93 percent of the respondent's gross in-

[1] These findings are based in part on a stipulation of facts.

come for 1938 was derived from the servicing of garments which were collected from and delivered to customers in Ohio, in the manner described above. In addition thereto, approximately 5 percent of its gross income during 1938 was derived from the servicing of garments which persons not in the respondent's employ collected in Ohio, brought to the respondent's plant for servicing, and delivered to persons in Ohio after the garments were serviced. The total income from work involving interstate shipments during 1938 was $23,088.43.

* * * * *

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

* * * * *

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

APPENDIX B

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V, Sec. 151, *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * * *

SEC. 10 (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

U. S. GOVERNMENT PRINTING OFFICE: 1941

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

NO. 529.

NATIONAL LABOR RELATIONS BOARD

v.

WHITE SWAN COMPANY.

On Certificate From the United States Circuit Court of Appeals for the Fourth Circuit.

BRIEF FOR WHITE SWAN COMPANY.

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INDEX.

Citations.

CASES:

Citations.

Citations.

Citations.

STATUTES:

MISCELLANEOUS:

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BRIEF FOR WHITE SWAN COMPANY.

STATEMENT.

The White Swan Company conducts a laundry and dry cleaning service in Wheeling, West Virginia, Wheeling being located on one side of the Ohio River. The Ohio River at this point divides the states of West Virginia and Ohio.

The Company owns one laundry, one office, maintains no branches, has no branch sales forces in any other community other than in Wheeling for the solicitation of business. The Company now employs approximately eighty (80) people. For a period of fifteen years prior to 1934 the company had not paid a single penny

of dividend to stockholders. It finally went into bankruptcy and was then operated in receivership for several years.

In the latter part of 1936, Mr. T. J. Murvin purchased the controlling interest in the company from the receivers and then proceeded to rehabilitate the machinery and operate the company itself. Mr. Murvin was a very able and experienced operator having a long record of experience in different laundries.

In looking over the plant, he found that the great bulk of the machinery was obsolete and worn out and needed replacement with more modern machinery. Considerable new machinery was purchased, in fact an unusual amount of new machinery, greater than the normal purchases that would ordinarily be made in a laundry, were made during the years 1937 and 1938. Contracts for the purchase of this machinery were all consummated at Wheeling, West Virginia.

The company operates 17 laundry routes by means of trucks. Fourteen of these routes operate exclusively in West Virginia, three of the routes cross the Ohio River at a bridge located in Wheeling and serve the other side of the river which is the Ohio side of the river. The company's service confines itself exclusively to what is known as the "Wheeling Industrial District" which district may be defined as that area comprised within a radius of 15 miles of the City of Wheeling.

On May 8, 1939, a complaint was issued by the CIO against the respondent company alleging that 12 people were discharged for union activities. The union charged that the company interfered with, restrained, and coerced members and that the company discouraged membership in Local No. 308. A hearing was held thereon and the Trial Examiner in making his Intermediate Report upheld the company in the dismissal of nine out of the 12 employees involved.

The Examiner ordered the reinstatement of three out of the 12 employees. The case proceeded before the National Board for argument and the National Board upheld the Examiner's report. The Board then petitioned the Fourth Circuit Court of Appeals for enforcement of the order and the entire case was argued before the Fourth Circuit Court of Appeals.

The Company contended from the very outset of the case that the National Board was without jurisdiction in this case for the reason that the respondent company was not engaged in interstate commerce and that jurisdiction, if any, would be within the purview of the State of West Virginia and not the National Board.

Respondent company also contended that its business was purely local and was a service business and that the Act did not apply to it.

The Fourth Circuit Court of Appeals concurred in the contentions advanced by the respondent to the effect that they were divided and in doubt and therefore certified to the Supreme Court two questions of law for instruction and advice. These questions they held were indispensable to the proper decision of the case. The Fourth Circuit Court of Appeals in their Statement of Facts states that the

> "Volume of interstate business thus involved is not sufficient in our opinion to bring the business within the jurisdiction of the Board."

They also stated:

> "The business involved is necessarily of a purely local character as the record shows that a radius of 15 miles is the practical limit for a laundry and dry cleaning business in this territory. The fact that business is done in Ohio outside of the state in which

respondent's laundry is located results from the fact that this purely local business is located in a city on a state line."

The Court further stated:

"We recognize that the collection and delivery of garments across state lines * * * constitutes interstate commerce. We are advertent, however, to the admonition of the Court that in applying the Act we are to bear in mind the distinction between what is national and what is local in the activities of commerce and * * * and although the letter of the National Labor Relations Act may govern such collections and deliveries in interstate commerce as are here involved, the question arises whether a proper interpretation of the Act in view of the intent of Congress would include them."

In another part they state:

"We are divided and in doubt as to whether such collection and delivery which results from the fact that business of a local character, such as a laundry, is located on a state line is sufficient to bring such business within the jurisdiction of the Board under the National Labor Relations Act. To so hold would bring under the jurisdiction of the Board a great variety of businesses of purely local character simply because they maintain a delivery service in cities located on state lines as there are many such cities in the United States. The question seems to us one of sufficient importance to justify us in certifying it to the Supreme Court so that it may be definitely settled."

The Solicitor General then filed a motion in the Court below asking that the certificate be amended and asked that the questions which had been submitted to

the Supreme Court be rephrased. This the lower Court refused to do for the reason that the phraseology as set up in the certificate to our mind distinctly and clearly sets forth to the Supreme Court the issues here involved, while the suggested phraseology asked for by the Solicitor General did not in our opinion properly state the question. At this stage now the case is before the Supreme Court.

By way of further explanation it might be stated that to our knowledge this is the first case involving the laundry industry which has gone before any of the Courts wherein an attempt was made to apply the National Act. Heretofore the laundry business has always been exempt from the National Acts even exempted from the NRA on the theory that it is a purely local business, rendered service only and did not engage in the commodities of interstate commerce and it has always heretofore been classified in the same category as the barber and shoe repairman, both of whom render service only and in our opinion do not engage in interstate commerce.

This case undoubtedly would not have arisen had this particular laundry been located off a state line, but due to the fact it is situated in a border line city the question arises.

ARGUMENT.

I.

The Laundry and Dry Cleaning Business Is a Purely Local Service Industry Subject Only to the Control of the States and to Impose Federal Regulation Destroys the Distinction Between That Which Is National and That Which Is Local.

The National Labor Relations Act is not applicable to respondent. Respondent has consistently held and now strenuously contends that the Act itself is not applicable to the respondent. As yet there has been no decision in the Federal Courts wherein the status of the laundry and dry cleaning business has been definitely decided when applying the National Labor Relations Act. Whether such business is intrastate or interstate or national or local or whether it actually affects interstate commerce is now before the Court for the first time. Laundries and dry cleaning establishments in every city and community are as numerous as the local restaurants, shoe repair shops, local butcher shops, drug stores, and grocery stores, and in practically every busy city block we find several laundry and dry cleaning establishments and in almost every town of any size we have the local chinaman who operates a laundry and for this reason it is familiarly termed the Chinaman's business.

The distinguishing characteristic of the laundry and dry cleaning business as compared to other types of business over which the National Labor Board has assumed jurisdiction is that the laundry and dry cleaning business is purely a service industry and therefore is necessarily local in nature. To attempt to apply the theory of interstate commerce to a local service company requires an unlimited amount of imagination plus

a reckless overlooking of the fundamental elements which comprise the working conditions of a laundry.

In all cases adjudicating other types of business wherein the jurisdiction of the Board has been sustained the defendant has engaged in interstate commerce on a large scale yet a fundamental difference exists between those types of business where jurisdiction was upheld and the one at bar. We find that in all types of business where the jurisdiction of the Board is upheld the companies involved in interstate commerce either *bought, sold, bartered, or exchanged their product or they purchased raw material and processed, manufactured, or changed its form, substance, character, utility, or value of the goods.*

We find also that in other types of business where the jurisdiction of the Act was upheld the business itself was either *nation wide* or comprised the area of and *operated in many states.* While opposed to that is the laundry and dry cleaning business which necessarily is *local only* and *operates within a restricted local area.* In other types of business where the jurisdiction of the Board was upheld it was found that although perhaps the company operated within the confines of one state its product was one which was used in interstate or foreign commerce and the best illustration of this type of business comes from those cases where the company repaired and built ships and vessels operating in interstate and foreign waters. Other cases involving other types of business uphold the jurisdiction of the Board on the theory that the title to the commodity in which the company deals changes hands in interstate commerce.

Applying all of these distinguishing features which have arisen in other types of business wherein the jurisdiction of the Act was upheld to the case at bar, we find that the business of the respondent company does not

come within the purview of any of the illustrations heretofore recited. The only business in which the White Swan Company is engaged is the laundry and dry cleaning of clothes belonging to an individual who desires to have them washed, cleaned, or pressed and these clothes always belong to the individual customer. Therefore the respondent *does not buy* articles of clothing and wearing apparel, it *does not sell* said articles, it *does not process* said articles, it *does not manufacture* said articles, or *fabricate* the same. The *title* to the articles of wearing apparel always *remains in the customer* and *the character, utility and value of the goods always remains the same.*

We believe it is important to keep these elements in mind because a perusal of all the cases decided to date shows that where the Act was applied one of the distinguishing items above mentioned was present. That company which in the cases decided, was ruled to be in interstate commerce, either bought, sold, bartered, or exchanged its product or it processed or manufactured its product and thus changed the character, utility, or value of the goods or it dealt in the specific goods and passed title to the same. These distinguishing features mark the striking difference between the case at bar and those types of cases where the jurisdiction of the Act has been upheld.

To rule that the National Act applies to this business of a purely local nature automatically destroys the distinction between that which is national and that which is local. Such a decision would immediately have the effect of applying the National Act or giving the National Act jurisdiction to every type of business regardless of how small. The states themselves would no longer have any power to regulate even the smallest business operating within their confines. Laundries and dry cleaning establishments are classified with the local

restaurant, butcher, grocer, and shoe repairman. The barber, and the shoe repairman, and the laundry and dry cleaning owners have only one commodity to sell and that is service, and they have always been placed in the same category with reference to business, namely they have always been known as local establishments rendering service only, and to now rule that these service businesses engage in interstate commerce makes for absurdity.

Let us assume a barber operating in Wheeling shaves a customer who crossed the bridge from the Ohio side to the Wheeling side. Under the theory of the Board the barber is in interstate commerce. Let us take the further illustration of an individual living on the Ohio side of the Ohio River who either walks or crosses over the bridge into Wheeling and has his shoes serviced or repaired. Under the theory advanced by the Board this shoe repairman is in interstate commerce. Or let us say that the barber himself leaves his shop at Wheeling and walks over the bridge to the Ohio side to shave a customer. This, under the Board's theory, would place him in interstate commerce. Or let us say the shoe repairman delivered the shoes which he had repaired over to the Ohio side of the river and collected his money. Is he in interstate commerce? Let us further give the illustration of the Chinaman operating his laundry in Wheeling. Some of his customers come from the Ohio side of the river and some of his customers he personally delivers the laundry to on the Ohio side. Does that place his business in interstate commerce?

The answer is plainly, no, this is not interstate commerce, because all of these men, including the laundrymen in this case operate a purely local business that confines itself to an area of a few miles and the only reason this case has arisen is because the City of Wheeling happens to be located on a state line.

We must keep in mind the admonition of the Supreme Court given in the case of *N. L. R. B. v. Jones and Laughlin Steel Corporation,* 301 U. S., Page 1, where the Court warns as follows:

> "Powers of Congress to regulate commerce may not be ascertained so as to embrace effects upon interstate commerce so indirect and remote that to embrace them would effectually obliterate the distinction between what is national and what is local and create a completely centralized government, the question being one of degree."

As we understand the law, the question of Federal rights and State rights is always before us and the Court in that case points out the danger of allowing the Act to apply in every instance because to do so would entirely eliminate the rights of the individual states. Control of all business regardless of how small would pass from the States to the Federal government. Many of our States have passed their own little Wagner Acts and conflicts will inevitably ensue between the power of the States and the Federal power if the National Act is permitted to apply to a laundry business which is only a service and which of necessity must always remain purely local in character and nature.

One of the distinguishing features therefore between interstate and intrastate business is that theory of national or local proportions. It is easy to understand why a business which operates nationally is in interstate commerce. It attempts to serve all of the states or many of them, has branch offices in many states, draws upon many states for its products and fabricates them and reships them to the several states. It advertises in many newspapers throughout the land, buys raw materials, processes the same, and sells the finished product, title to the article passes and the ef-

fects of such operations on interstate commerce are immediate and direct and undoubtedly these operations conducted by a large business are profitable because they continue so to operate.

Now what difference do we find in the operation of the respondent company which is purely local and cannot operate profitably on a national scale. We strenuously advance the fact that that laundry and dry cleaning business being a purely local business in its character and nature cannot operate nationally at a profit. We find that the respondent has seventeen routes serving customers, fourteen of these routes operate strictly within the confines of the State of West Virginia, three of the routes merely cross the bridge over from Wheeling into Ohio. In order to have a clear picture of respondent's business it is necessary to state that the City of Wheeling is situated on one side of the Ohio River and that the State of Ohio is on the other side of the river connected by a bridge. Wheeling, with its heavy industrial district is naturally the focal point of community life in this particular area and for the purpose of explaining the extent of respondent's business we refer in this brief to the "Wheeling Industrial District" which is described as an area having a fifteen mile radius with Wheeling as the center of the circle or the district. The respondent's business confines itself exclusively to this area.

The respondent cannot possibly engage in interstate commerce because to so engage would require considerable time to move one's service to the customer. In the laundry and dry cleaning business speed and service must necessarily go hand in hand and if a customer gives a suit or dress to be laundered or cleaned one day she expects to have it returned within a day or two and the thought of transporting the suit or dress

over a long distance between states and render such service is unthinkable because speed of service is required by the customer and this must always keep the laundry and dry cleaning business essentially local in nature.

As before stated this case undoubtedly would not be before the Court if it were not for the fact that Wheeling is located on a state line and it just so happens that three of the seventeen routes operated by respondent cross the bridge at the river over to the Ohio side. Yet we find, however, that even the National Labor Relations Board in other types of business, namely the trucking business ruled that a similar situation did not affect commerce. Case of Protective Motor Service Company:

> In re Protective Motor Service Co., (Philadelphia, Pa.) and Twenty-five Employees, Case No. C-25, Mar. 12, 1940 (21 N. L. R. B., No. 50.)
>
> Original decision reported at 1 LRR Man. 74; such decision withdrawn by order reported at 2 LRR Man. 552.
>
> "Operations of armored truck transport company are not sufficiently shown to affect commerce with NLRA although such operations include two daily routes to out of state points and although company filed an application with Interstate Commerce Commission for a permit authorizing continuance of operations in interstate commerce under Federal Motor Carrier Act, 1935, where greater part of company's business consists of transporting valuables for local concerns WITHIN ONE CITY."

The purely local nature of the business itself is manifested when we note that the respondent does not maintain sales offices or agencies for the solicitation of orders in any place outside of the City of Wheeling

and the respondent maintains its only plant and executive office in the City of Wheeling. It advertises its services and facilities only in Wheeling newspapers. Is it not fair to assume that if respondent's business was interstate in character it would have branch offices located in all parts of Ohio and other states, is it not fair to assume that if the business were interstate respondent would solicit and advertise for business in other states besides its home office in Wheeling, West Virginia? The answer is clear. A laundry cannot operate in interstate commerce profitably. To attempt to operate a laundry beyond a radius of fifteen miles is purely suicidal for the reason that the long haul that would be involved, first, eliminates any possibility of profit and, secondly, prevents the laundry from giving the customer the immediate one or two day service which the customer demands. Therefore, every laundry must necessarily be local in its nature and cannot hope or expect to engage in interstate commerce. It cannot hope to secure customers from many states and far distances for the very reason that when one wants a suit pressed or cleaned or clothing washed and pressed, he expects delivery within at least two days from the time the articles are picked up and no customer or group of customers could be found who would wait weeks for delivery, such as is common in those types of business which actually engage in interstate commerce. The tendency of respondent's business has been to consistently restrict the area which it attempts to serve rather than enlarge because a restricted territory enables one to derive a larger profit due to the shorter haul. The reason for restricting the territory is also obvious when we consider that laundry and dry cleaning establishments, shoe repair shops, and barber shops, are multitudinous in every community and when a laundry attempts to travel too far from its base or plant to pick up and deliver laundry it cannot compete with the numerous competitors who

are located nearer to the customer and do not have to make the long haul which eliminates profits and for this reason the laundry business must always remain purely local in its character rather than national.

It is difficult to understand how the laundry business can be described as affecting interstate commerce. If A owns a suit and sends it to a laundry to be cleaned and pressed, what has the laundry done to that suit? The title to the suit always remains in A, the laundry has not processed or manufactured the suit, it has not taken a bolt of cloth, dyed it, and then cut it up and made a suit out of it, the laundry has acquired no title to it, it has not sold it, it has not purchased the suit, it has not bartered or exchanged the suit, nor has it changed the character or utility or value of the suit. It has merely cleaned and pressed it and then returned it to the owner and that is what we call purely service. The laundry business is only a service business, just as the barber and shoe repairman rendered service only, so does the laundry.

Stress has been laid on the fact that 18% of respondent's gross income is derived for work done on articles brought to its plant from points in Ohio. It must be remembered that this percentage reduces itself to 13% for the reason that 5% of the 18% is what is known as a bob tail operation. By a bob tail operation we mean, a situation where an individual, an independent contractor, owns a truck and of his own volition builds up a route servicing customers who desire laundering and dry cleaning. It is within the province of this bob tail route owner to have the goods of his customers serviced at any laundry he desires. He is always an independent contractor and therefore his business is his own and does not belong to the laundry. Therefore, the correct percentage of respondent's gross

income from Ohio reduces itself from 18% to 13%, or in dollars and cents for the year 1938 it reduces itself from $23,088.43 to $17,647.18 for the reason that the 5% bob tail operation, totalling $6,441.21, is owned by independent contractors and is not owned by the respondent company.

Much stress has been laid By the Board on the purchase of laundry supplies and equipment during the year 1938. We believe that these purchases are a rather remote way to analyze respondent's business for the reason that as has been before stated respondent is not a manufacturer and does not fabricate or manufacture anything, and what few supplies are needed are just incidental to the cleaning and pressing business. However, in an attempt to bolster up these figures the Board injects into the picture purchases of machinery made during the year 1938. It is obvious that unusual purchases of machinery in a company are not made yearly and to allow these figures to remain in calculations to determine whether or not the company is engaged in interstate commerce gives one a distorted view of the picture. The White Swan Company had just come out of bankruptcy and all machinery was sadly in need of replacement. Much of the replacement was made in 1938 and naturally these replacements will probably not have to be made again for another fifteen years, or the life of the machinery, therefore, to take these figures in consideration would seriously distort the issue. When the plant was taken over by the new owner late in 1936 the machinery needed rehabilitation. It was obsolete and in the prior fifteen years of its history, prior to the bankruptcy, the White Swan Company had never paid the stockholders a dividend, and it was necessary to install new and modern machinery to place the plant on a paying basis. The purchases for machinery were heavier in 1937 and 1938 than normal pur-

chases and after 1938 these purchases would no longer be present but you would have only the obsolescence figure to consider. Note, however, that the sales contracts for the purchase of new machinery were all closed at the company's office at Wheeling.

The total purchases for supplies and equipment which included machinery for 1938 was $38,333.15. Of this amount, purchases, the contracts for which were consummated at Wheeling, the goods, however, being delivered from out of state, were 20% or $10,810.90, which resolves itself down to the following figures as compared to the total sales for laundry and dry cleaning for the year 1938 which totalled $128,752.96; namely the purchases of goods which came from out of state, the contracts however having been consummated in Wheeling totaled a little over $10,000 or 8% of total sales.

We believe that the question of machinery purchases which were so unusual due to rehabilitation should not be taken into consideration as giving a true picture of the yearly normal purchases by a laundry. And in further view of the fact that all of said purchases were made in Wheeling, we believe that the machinery purchases can be eliminated from consideration entirely.

Case of Cactus Mines Co.—In re Cactus Mines Company (Willow Springs, Calif. and International Union of Mine, Mill and Smelter Workers, Local No. 272. Case No. C—1185, Mar. 16, 1940 (21 N. L. R. B., No. 68).

"Gold and silver mining company's operations do not affect commerce within NLRA where it sells its entire output of concentrates and precipitates to a smelting company located within same state, smelting company sells gold and silver recovered

from mining company's concentrates and precipitates to United States Government at its mint located in same state, only 0.6 per cent of supplies are purchased outside of state, and all of permanent machinery and equipment, although half of it was manufactured in other states, was purchased within state."

See also *National Labor Relations Board v. Idaho, Maryland Mines Corporation,* 98 Federal Reporter, Second Series, 129.

Respondent further in the operation of its plant makes its own steam and purchases coal and water for the same in the City of Wheeling.

In considering the case at bar, it is strenuously argued that respondent's business is one which is entirely local. The distinction is so aptly stated in the Jones and Laughlin Case, 301 U. S., page 1:

"The distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our federal system."

Try as we may, we cannot see how any operation of respondent company would have an immediate or direct effect upon commerce. The most that can be said of this local concern is that any effect that it might have on commerce is indirect and remote. The very nature of respondent's business is such that it could not profitably engage in interstate commerce.

We believe that the case at bar brings us squarely up to the issue as to whether or not the state may control laundries or whether all laundries shall be declared national in scope and in interstate commerce. We believe that for the Courts so to rule in this case would be

carrying the Federal power too far as was so well stated in the case of *Shechter Poultry Co. v. U. S.*, 295 U. S. 495.

> "In determining how far the Federal Government may go in controlling intrastate transactions upon the ground that they affect interstate commerce, there is a necessary and well established distinction between the direct and indirect effects. The precise line can be drawn only as individual cases arise, but the distinction is clear in principle, but where the effect of intrastate transactions upon interstate commerce is merely indirect such transactions remain within the domain of state power. If the commerce clause were so construed to reach all enterprises and transactions that could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people and the authority of the state over its domestic concerns would exist only by sufferance of the federal government. Indeed on such a theory even the development of a state's commercial facilities would be subject to federal control."

The service as rendered by the respondent company is a service rendered to the private individual consumer who lives in the immediate locality or community in which the laundry is located. No matter how we analyze the business here, it seems impossible to take it out of the purview of a purely local business.

In reviewing the Constitution of the United States we find three parts pertinent to the issue:

> Section A. The Congress shall have the power to regulate commerce with foreign nations and among the several states and with the Indian Tribes.

Article 9. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Article 10. The powers not delegated to the United States by the Constitution nor prohibited to it by the states are reserved to the states respectively or to the people.

It is the contention of the respondent here that it merely serves the Wheeling Industrial Community comprising a radius of fifteen miles. We believe the following case in point:

Veazie v. Moore, 14 How. 573, L. Ed. 545.

"Commerce with foreign nations must signify commerce which in some sense is necessarily connected with these nations transactions which either immediately or at some stage of their progress must be extra-territorial. The phrase can never be applied to transactions *wholly internal by the citizens of the same community* or to a polity and laws whose ends and purposes and operations are restricted to the territory and soil and jurisdiction of such community."

"The power vested in Congress was not designed to operate upon matters essentially local in their nature and extent."

From time immemorial it has always been understood that the power of the Congress to regulate commerce cannot be broadened to such a point that it interferes with internal trade. We sincerely believe that the laundry and dry cleaning business, as well as the barber business and the shoe repair business, are the best illustrations of local internal business that can be found in any state. We believe that it was never conceived by the framers of the Constitution that Federal power

could be so extended as to reach these local service businesses.

U. S. v. Dewitt, 9 Wall. 44, 19 L. Ed. 593.

"This express grant of power to regulate commerce among the several states has always been understood as limited by its terms and as a virtual denial of any power to interfere with the internal trade in business of the separate states."

The individual states have never conceded the right of Congress to regulate purely local small businesses. These rights have always been jealously guarded by the states. Nor have the states ever surrendered this power to regulate local service to the government.

Peirce v. New Hampshire, 5 How. 574, 12 L. Ed. 256.

"The power of Congress does not extend further than the regulations of commerce with foreign nations and among the several states. Beyond these limits the states have never surrendered their power over trade and commerce and may still exercise free from any controlling power on the part of the general government. Every state, therefore, may regulate itself on internal traffic according to its own judgment and upon its own views of the interests and well being of its citizens."

The fact that three out of seventeen of respondent's routes merely cross a bridge separating two states and operate on the other side of the river to our mind has such a remote effect on interstate commerce that it cannot be said that it in any way actually affects commerce.

Covington, etc. Bridge Co. v. Kentucky, 154 U. S. 209.

"States have plenary power and Congress has no right to interfere concerning the internal commerce

of the state though the regulations of the state may affect interstate commerce indirectly, but their bearing upon it is so remote that it cannot be termed in any just sense an interference."

We feel that the State of West Virginia still has the absolute power to control the respondent company even though a very slight part of the business of the respondent company merely crosses the river to the Ohio side.

State v. Louisville, etc. R. Co., 97 Miss. 35, 51 So. 918.

"A state is not deprived of its power of control over domestic corporations because its action within the sphere of its powers may indirectly affect interstate commerce."

That the Fourth Circuit Court of Appeals realizes the danger in upholding the jurisdiction of the Act in this case is evidenced by a review of its statement of facts in the Certificate wherein it states:

"The volume of the interstate business thus involved is not sufficient in our opinion to bring the business within the jurisdiction of the Board."

That it obviously recognized the fact that the business was purely local such as the barber and the shoe repairman is found also in its statement when it says:

"The business involved is necessarily of a purely local character as the record shows that a radius of fifteen miles is the practical limit for a laundry or dry cleaning business in this territory. The fact that the business is done in Ohio outside of the State in which respondent's laundry is located *results from the fact that this purely local business is located in a city on a state line.*"

That the Circuit Court was also aware of the danger of applying the Act is shown by its statement:

> "We are advertent, however, to the admonition of the Court that in applying the Act we are to bear in mind the distinction between what is national and what is local in the activities of Commerce."

That the lower Court realized the fact that to uphold the Act as to this particular type of local service business would automatically allow the Act to be applied to all local small business is evidenced by its statement reading:

> "To so hold would be to bring under the jurisdiction of the Board a great variety of businesses of purely local nature simply because they maintain a delivery service in cities located on state lines, as there are many such cities in the United States. The question seems to us one of sufficient importance in justifying us to certify it to the Supreme Court so that it may be definitely settled."

The National Board in its brief before this Court attempts to show jurisdiction citing the history of other laundries located throughout the country. We believe that the illustrations are not in point for the reason that the record clearly shows that the respondent company does not operate a chain of laundries or a chain of establishments of any type, but merely operates entirely and exclusively in the Wheeling Industrial District.

That the laundry and dry cleaning business has always been considered a local service enterprise may be gleaned from a review of the history of the NIRA and we find that under the NIRA it was early recognized that laundries were purely local service industries. We take the liberty here to quote part of the rulings given at the

time under the NIRA. See *United States Law Week,* Volume 1, Part 1, 1933-34, Page 518:

"To foster fair competition and eliminate unfair competitive practices between *local trade and service enterprises* such as respond to geographcial rather than commodity organization and administration.

Sec. 1. National Codes of Fair Competition will in general be applied to those partially local trades and industries such as retail stores, and filling stations, which provide necessary outlets for productive enterprises of a national character.

2. *Other classes of local trade and service enterprises such as barber shops,* LAUNDRIES, *building management, restaurants, and local transportation facilities, will be encouraged to organize themselves for regional self-government and to adopt regional codes or agreements.*

5. State legislation should be encouraged to give additional sanctions to the agreements regionally for regional trades and industries. (Release No. 3265, Feb. 13, 1934.)"

We find that this was shortly followed up by an executive order exempting laundries from NIRA jurisdiction for the reason that it was here recognized that the laundry business was purely a local business and had no national aspects and therefore should be regulated by the states. See *U. S. Law Week,* Vol. 1, Part 2, 1934, Page 845.

"Service Industries Exempted from NRA Code Provisions.

Basic revision of NRA policy was initiated by the Executive Order announced May 28 authorizing the exemption of service trades and industries from trade practices rules imposed by national codes.

The Executive Order empowers the NRA Administrator to designate the trade and industries to which the exemption will apply.

The exemptions will take effect immediately in the following seven trades which have already been designated by order of the Administrator as properly included within the purpose and intent of the Executive Order; *Cleaning and Dyeing Trade;* Barber Shop Trade; Shoe Rebuilding Trade; Motor Vehicle Storage and Parking Trade; Advertising Display Installation Trade; Advertising Distributing Trade; Bowling and Billiard Trade.

The President, in an explanatory statement accompanying the Order attributed his action to the need for a greater degree of *autonomous local self-government in service industries,* stressed the impracticability of imposing rigid trade-practice standards on a national scale in such cases."

See also the *United States Law Week,* Volume 1, Part 2, 1934, Page 847.

Executive Order Dated May 26, 1934

"Pursuant to authority vested in me by Title I of the National Industrial Recovery Act, I, Franklin D. Roosevelt, President of the United States, do hereby direct that all provisions in codes of *such service trades or industries* as shall hereafter be designated by the Administrator for National Recovery be hereby suspended."

See also *United States Law Week,* Volume 1, Part 2, Page 847,

"National Industrial Recovery Act—Codes of fair competition—Executive interpretation of order suspending trade practice provisions of codes for service trades and industries—

"Most industries have a national community of economic interest even though the operation of some of their units is local. There are others which, notwithstanding their having national trade associations, do not actually integrate themselves nationally. Whether an industry can govern and police itself under the fair trade provisions of a National Code depends on its degree of actual economic integration on a national scale and on the organization and solidarity within the whole industry. A trial period of some months has shown that while most industries, after organization for this work and a little experience with it, can secure uniform national results, *there are others to which a greater degree of autonomous local self-government is desirable.* Among these are some, but not all, of the so-called *service* industries—that is, industries engaged in the sale of services rather than of goods."

Note also that the cleaning and dyeing industry was expressly exempted from the National Code, Administrative Order May 28, 1934, *United States Law Week,* Volume 1, Part 2, 1934, Page 851,

"Codes of Fair Competition.—Service trades and industries—Exemption from trade practice provisions of national codes—

"By virtue of the authority vested in me by the President of the United States * * * I, Hugh S. Johnson, * * * hereby designate the following trades and industries to be properly included within the purpose and intent of said Order:

Motor Vehicle Storage and Parking Trade; Bowling and Billiard Trade; Barber Shop Trade; *Cleaning and Dyenig Trade;* Shoe Rebuilding Trade; Advertising Display Installation Trade; Advertising Distributing Trade."

Note: This order means that the cleaning and dyeing trade was exempt from the provisions of the National Code.

When we look over the report of the Senate at the time this bill was contemplated, namely the bill now known as the National Labor Relations Act, we find that the Committee reports that it was not the purpose of the Act to project the Federal Government into matters of purely intrastate concern. We take the liberty here to quote a part of the Senate Committee report, May 2, 1935 (report No. 573):—

> "The term affecting commerce is inserted as a short cut to prevent the repetition of lengthy jurisdictional phraseology throughout the bill. *The bill limits Federal action to areas sanctioned by the commerce clause. The bill does not project the Federal Government into matters of purely intrastate concern. It applies only in matters which burden or affect or obstruct interstate commerce,* or which have led or tend to lead to a labor dispute that might have such effect upon interstate commerce."

We now turn to the wording of the Act itself, Section 2, which reads as follows:—

> 7—"The term affecting commerce means in commerce or burdening or obstructing commerce, or the free flow of commerce, or having led or tending to lead to a labor dispute, burdening or obstructing commerce, or the free flow of commerce."

In view of the fact that the number of laundry and dry cleaning establishments are as numerous in the average town as the barber and the shoe repair shops, it is obvious that any strike or any tendency towards strike would not affect interstate commerce. The other numerous competitors in the same town would immediately

absorb all of the business of the respondent, should such a strike occur, and the strike in a laundry would have no far reaching or national affects. We can readily appreciate that a strike, say in a steel mill in Pittsburgh would affect the mining and distribution of ore in Michigan, or mining and transportation of coal from Kentucky or West Virginia, but no such far reaching affects would be prevalent in a laundry strike. Just as it is ridiculous to assume that a strike in a barber shop employing 10 or 15 men, or a strike in a shoe repair shop employing 10 men would affect interstate commerce, so it is also absurd to suggest that a strike in a laundry and dry cleaning establishment would affect interstate commerce.

We have before stated that this is the first case up before the Court for decision, wherein an attempt is made by the National Board to assume jurisdiction over laundries. The question therefore becomes one, shall the States assume jurisdiction over laundries with their Local Labor Boards, or shall the National Board assume jurisdiction. That the States which have enacted labor laws assume jurisdiction is shown by a list of the following States and the cases decided therein by the States.

MASSACHUSETTS.

Loyal Crown Linen Service, Inc., et al., 1939 Mass. L. R. C., Case No. U. P. 251, Jan. 11, 1939.

Wash Rite Laundry Co. et al., 1938, Mass. L. R. C. Case No. U. P. 121, June 20, 1938.

White Cleaners & Dyers, Inc., et al., 1938, Mass. L. R. C. Case No. U. P. 147, June 20, 1938.

C. & W. Dyeing & Cleaning Co., Inc., et al., Mass. L. R. C. Case No. U. P. 10, Feb. 10, 1938.

Back Bay Chevrolet, Inc., et al., Mass. L. R. C. Case No. U. P. 46, March 1, 1938.

Abe Lainer d/b/a Lainer's Cleaners & Dyers Co., et al., Mass. L. R. C. Case Nos. U. P. 101, 134, 139, April 27, 1938.

Francis V. and Edwin U. Cahill d/b/a Union Laundry et al., Mass. L. R. C. Case No. U. P. 93, May 23, 1938.

Naif Makol World Cleaners & Dyers Co., et al., Mass. L. R. C. Case No. U. P. 85, May 23, 1938.

Howes Co. et al., Mass. L. R. C. Case No. U. P. 281, May 22, 1939.

Sani-Wash Laundry et al., Mass. L. R. C. Case No. U. P. 391, Sept. 21, 1939.

Eastern Overall Dry Cleaning Co. et al. (1940), Mass. L. R. C. Case No. U. P. 396, Jan. 19, 1940.

Golden Bell Cleaners, Inc., 1940, Mass. L. R. C. Case No. C. R. 333, April 29, 1940.

Lewando's French Dyeing and Cleansing Co., 1940, Mass. L. R. C. Case No. C. R. 341, May 6, 1940.

Shub, J. H., et al., D. B. A., American Dry Cleaning Co. (1940), Mass. L. R. C. Case No. C. R. 347, May 20, 1940.

Bonanno Laundry & Supply Co. (1940), Mass. L. R. C. Case No. C. R. 403, Nov., 1940.

Capitol Laundry Co. (1940), Mass. L. R. C. Case No. C. R. 406, Nov. 6. 1940.

Fornsworth New Method Laundry, Inc. (1940), Mass. L. R. C. Case No. C. R. 375, Aug. 13, 1940.

Hub Laundry Co. (1940), Mass. L. R. C. Case No. C. R. 424, Dec. 12, 1940.

Morgan Laundry Service, Inc. (1940), Mass. L. R. C. Case No. C. R. 386, Sept. 12, 1940.

United Laundries Co. et al. (1938), Mass. L. R. C. Case No. C. R. 27, Feb. 16, 1938.

NEW YORK.

Economy Clean Towel Supply Co., Inc., et al., 1938, N. Y. S. L. R. B. Dec. No. 198, July 20, 1938.

Stapleton Service Laundry, Inc., et al. (1938), N. Y., S. L. R. B. Dec. No. 206, Sept. 23, 1938.

Consolidated Laundry Corp. et al., 1937, N. Y. S. L. R. B. Dec. No. 4, Sept. 16, 1937.

Fox Square Laundry Co., Inc., et al., 1939, N. Y. S. L. R. B. Dec. No. 669, Sept. 21, 1939.

Hill Top Laundry, Inc., et al. (1940), N. Y. S. L. R. B. Dec. No. 838, Case No. W. E-156, Mar. 25, 1940.

Midtown Laundry Inc., et al. (1940), N. Y. S. L. R. B. Dec. No. 804, Case No. S. E.-4197, Feb. 8, 1940.

Premier Linen Supply & Laundry Co., Inc., et al., 1939, N. Y. S. L. R. B. Dec. No. 738, Nov. 22, 1939.

Prompt Family Laundry, Inc., et al. (1940), N. Y. S. L. R. B. Dec. No. 771, Jan. 9, 1940.

Quality Laundry Service, Inc., et al. (1937), N. Y. S. L. R. B. Dec. No. 10, Nov. 1, 1937.

Tudor Laundry Co. et al. (1939), N. Y. S. L. R. B. Case No. S. U. 3581, July 12, 1939.

PENNSYLVANIA

Budget Laundry Co., et al., Pa. L. R. B. Case No. 170, April 12, 1938.

Crandall, McKenzie & Henderson, Inc., et al., 1939, Pa. L. R. B., Dec. No. 92, Feb. 26, 1940.

Lincoln Laundry Co., et al., 1939, Pa. L. R. B. Dec. No. 136, Jan. 16, 1940.

Wilson Laundry Co. et al., 1939, Pa. L. R. B. Case No. 34 Oct. 9, 1939.

Community Laundry Co., Inc., et al., 1937, Pa. L. R. B. Case No. 123, May 13, 1939.

East Cleaners & Dyers, Inc., et al., 1938, Pa. L. R. B. No. 196, Apr. 20, 1939.

Liberty Laundry, et al., (1939) Pa. L. R. B. Case No. 70, Nov. 21, 1939.

WISCONSIN

Waukesha Palace Laundry Co., et al., Wisc., L. R. B. Case No. 406, C-24, April 30, 1938.

Badger Nu-Way Cleaners, et al., Wisc., L. R. B. Case No. 31; Ce2, Dec. No. 19, Sept. 23, 1939.

Laundry Workers Int. Union, et al., (1940) W. L. R. B. Case No. 74 Ce-11 Dec. No. 47 2/23/40.

II.

Was It the Intent of the Congress to Make the Act Apply to Local Service Establishments?

In order to ascertain the intent of the Congress at the time of the passage of the bill, it is well to review again the findings and policy of the bill, as outlined in Section 1 of the Act known as the National Labor Relations Act.

Act of July 5, 1935, C. 372, 49 Stat. 449; 29 U. S. C., Supp. V, Sec. 151, *et seq.*

We here take the liberty to quote Section 1 of the Act, which we deem pertinent to the issue:—

> "The denial by employers of the right to employees to organize, and the refusal by the employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest which have the intent or the necessary effect of burdening or obstructing commerce by
>
> (a) Impairing the efficiency, safety or operation of the instrumentalities of commerce.
>
> (b) Occurring in the current of commerce.

(c) Materially affecting, restraining or controlling the flow of raw materials, or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce.

(d) Or causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of ccommerce."

It is obvious from reading this Section that the Congress had in mind when speaking of commerce, either the instrumentalities of commerce or the flow of raw materials with the manufacture of processed goods and the reshipment thereof into commerce. These are the very things that a laundry does not engage in. As previously stated in this brief, raw materials are not manufactured or processed and reshipped into commerce. Nor are even prices of such materials or goods in commerce affected by anything that a laundry or dry cleaning establishment does in the way of service. The whole intent and purport of this Section of the Act is entirely repugnant to the thought of merely servicing a garment such as a laundry or dry cleaning establishment performs.

To attempt to apply the National Labor Relations Act to either the laundry or dry cleaning industry would be an attempt to apply a statute which would produce results contrary to the plain purpose and policy of the enactment, since the purposes and policy of the enactment is to regulate business, which has a national aspect rather than a purely local aspect.

We believe the following case in point:—

Sorrells v. U. S., 287 U. S. Reports, page 435, where we take the liberty to quote:—

> "Where application of the penal statute, according to its literal meaning would produce results contrary to the plain purpose and policy of the enactment and flagrantly unjust, another construction should be adopted, if possible."

The question as to whether a laundry is in interstate or intrastate commerce has been before the Courts before. *See 54 Southwestern Reporter, Page 981. Smith, Clerk, v. Jackson, Supreme Court of Tenn., December 20, 1899.* This case arose out of a tax which the agent of the State placed on an individual who was a local agent for a laundry situated in another State, and the individual claimed immunity from the local tax on the theory that his laundry business was interstate commerce. The individual collected soiled laundry from his neighbors in Tennessee and shipped it to a laundry in Kentucky to be washed and laundered. When this was done, it was sent back by the laundry to the individual in Tennessee, who delivered it to the owners and received from them the price of the entire service, which he divided equally with the laundry. The question was, "Was this individual engaged in commerce?" We find that it was here recognized by the Courts that the laundry business is not interstate commerce and we take the liberty to quote the Court in detail on this point:—

> "The word *commerce* found in this clause can not be held to embrace a transaction such as is here presented. It implies when used by businessmen, as it is defined by Mr. Webster, the lexicographer. Trade or traffic as in the exchange of specific articles or commodities or else of these for money or its representative; in a case like the present nothing, in the true commercial sense, is sold or exchanged. The

agent takes the articles committed to his care and agrees with the owner that he will send them across the State line and have certain labor bestowed on them, and when returned, then he is to receive compensation equal to this labor. There is no commodity created of which the ownership is changed. It is merely a personal contract based upon a valuable consideration following within the protection of this clause of the Constitution."

The Court further likens this transaction to the sale of an insurance policy and quotes *Paul v. Virginia,* 8 Wall, 168, and likens the laundry business, which it defines as a personal contract, unto the sale of insurance policies, which the Supreme Court has held is not interstate commerce.

Since the respondent Company is located on the State line, and we believe that this is the only reason that this case ever arose, we believe the following case in point:

Scannon v. Kansas City Railroad Co., 41 Missouri App. 194

"A shipment of cattle to Kansas City, Missouri, from a point in the same State is not interstate commerce, though the stock yards where the cattle are unloaded extend into both the States of Missouri and Kansas, and though the actual point of unloading is in Kansas and the assignment is to commissioned merchants whose place of business is across the State line in Kansas."

We find another laundry case cited in *Smith v. Jackson,* 54 S. W. 981—103 Tenn. 673:—

"Laundry business *is not commerce* within the meaning of this clause, and one whose business it is to collect soiled laundry and express it to its principal in another State to be washed and laundered and when returned to deliver it to its owner or owners, receiving from them a price for the entire service which he divides with his principal, is liable for the payment of a privilege tax."

In this case, the privilege tax was a State tax, and the defendant claimed immunity on the theory that he was engaged in interstate commerce, and the Court held it was not interstate commerce, but was intrastate commerce.

To the same effect, see *Commonwealth v. Pearl Laundry Co.*, 105 Ky. 259—49 S. W. 26.

In the case at bar the lower Court was bothered with this question because it felt that a laundry business was entirely local, and although it might come within the letter of the statute, it does not come within the spirit of the statute, or even the intention of the makers of the statute. We believe therefore, that the following case is in point on this line of thought:

Holy Trinity Church v. U. S., 143 U. S. 457:

"It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute because not within the spirit nor within the intention of its makers."

"Frequently words of general meaning are used in a statute, words broad enough to include an act in question and yet a consideration of the whole legislation or of the circumstances surrounding its enactment or of the absurd results which follow from giving such broad meaning to the words makes it

unreasonable to believe that the legislator intended to include the particular act."

We feel that to allow the National Act to apply to a small local business such as a laundry, would create an absurdity, for the reason that to permit the act to apply to a laundry would allow it also to apply to a barber shop, a shoe repair shop, or any of the other service industries of which there are so many in every small community. In other words, the net result would be that all business, regardless of type, would be encompassed by the National Act and the individual States would no longer have control of any business within the State confines.

We believe that there is serious danger in extending this statute beyond its purpose. The following case, we believe, is in point:

Caminetti v. U. S., 242 U. S. 470 at 490:
"Reports to Congress accompanying the introduction of purpose laws may aid the Courts in reaching the true meaning of the legislature in cases of doubtful interpretation."—See also dissenting opinion, page 502.

"There is danger in extending a statute beyond its purpose, even if justified by a strict adherence to its words."

III.

The Answer to the First Question Certified by the Lower Court, Should Be in the Negative, and the Answer to the Second Question Should Be in the Negative.

We believe that both questions, as submitted by the lower Court, submit the question very fairly. It is argued by the Board, however, that the Court has not submitted the question of purchases in its framed questions, and the Board states in its brief, that the question of purchases also should be considered in arriving at jurisdiction. The lower Court states, however, that the matter of purchases was insufficient, in its opinion, to confer jurisdiction, and confines itself to the matter of collection, servicing and delivery primarily.

We agree whole-heartedly with the Court below on the matter of purchases, as the same apply to a laundry. It must be remembered that a laundry does not make purchases with the idea of reselling them or fabricating or processing these purchases, and changing the form, substance, character, utility, or value thereof and then resell them, but purchases in a laundry business mean just those little incidental items that are used to perform the service on the garment. In other words, it includes the purchase of bluing, tape which is used on presses, and padding which is also used on laundry presses. A laundry purchases soap and bleach and solvent, and these items are used to clean the garments. Coal and water are used, but only for the purpose of producing steam, etc., to wash the soiled clothing. None of these purchases go into processing or manufacture, but these purchases are immediately consumed and therefore have no opportunity, of themselves, to become a further part of interstate commerce. And in the case at bar, it was definitey proved that the purchases, as above outlined, were made in the City of Wheeling, which

is the home town of the respondent, and even though a few purchases may have originated out of the State, the contracts for the same were consumated in the City of Wheeling.

With reference to the purchase of machinery, we feel the Board has erred in attempting to consider purchases of laundry machinery as an element of interstate commerce. As we have previously outlined, the purchases of machinery in the particular case at bar, for one year were heavy for the reason that the Company had just passed through a period of bankruptcy, and much of the old machinery was junked and new machinery purchased. Now it is absurd to use these new machinery purchases as a basis for determining whether or not a particular company is in interstate commerce, because once that machinery is purchased, probably no additional purchases of a similar type will be made for 15 or 20 years, and to use these machinery purchases as a basis for determining whether a Company is in interstate commerce, gives a distorted view of the actual business itself, because they would not be normal purchases from year to year. Furthermore, as we view purchases with respect to their effect on commerce, we believe the theory of purchases only applies when those articles purchased are used and fabricated and processed and become a part of a new product, which in turn is again shipped out into interstate commerce.

In this case, the articles purchased, which were in the form of machinery, came to rest, and there they will stay for 15 or 20 years until again obsolete. Undoubtedly the Lower Court detailed the theory the same way, and that is the reason that they conclude the matter of purchases in a laundry business as of little importance in determining the true aspect of the business as the same affects commerce.

As before stated, and as incidental, we might again add that all of these purchases of machinery were negotiated for and the contracts consummated at Wheeling, West Virginia, the home office of the respondent.

We concur with the opinion of the Court below with reference to these so-called purchases, when it states:—

> "We are clearly of the opinion, however, as stated in our certificate, that the volume of interstate business involved in the purchase of supplies is not sufficient to bring the business of the respondent within the jurisdiction of the Board."

IV.

Analysis of the Cases Cited by the Board in Support of Jurisdiction.

We take the liberty of pointing out briefly the distinction between those cases which the Board cites in support of jurisdiction, and the case at bar.

N. L. R. B. v. J. & L., 301 U. S., page 1. Note, In this case raw materials were drawn from several States, fabricated, manufactured, and resold in different States. (White Swan Company manufactures nothing, and sells nothing.)

Santa Cruz Fruit Packing Company v. N. L. R. B., 303 U. S. 453. Note, In this case the defendant's business was not service, but consisted of canning fruits and selling them in the different States to which they were shipped, and title to the fruit passed. The fruit was processed, its form, substance, quality and utility changed, and then title passed in the goods in interstate commerce. (White Swan Company does not buy or sell or process, but merely renders a service.)

Consolidated Edison Company v. N. L. R. B., 305 U. S., pages 197, 222. This Company served three and one-half million gas and electric customers. They manufacture gas, electricity and steam. They bought oil, coal and gas and converted or processed it and then resold. They also supplied other Companies dealing in interstate commerce, such as railroads, steamship companies, radios, etc. (White Swan Company manufactures nothing, and does not sell the service to those who need the same in interstate commerce.)

N. L. R. B. v. Fainblatt, 306 U. S. 601. In this case raw materials were transported from New York to New Jersey to be fabricated or cloth was cut in New York and transported to New Jersey to be fabricated. After the fabricating and processing was finished, the finished goods were then redelivered back to either New York or to any other State in the union. (White Swan Company does not process and does not ship to all States of the union, and does not change the form, color, or texture of clothes, merely cleans them.)

N. L. R. B. v. Bradford Dyeing & Finishing Association, 60 Supreme Court 918. In this case the respondent processed the gray cloth and manufactured or changed the character of it. (White Swan does not process, manufacture or change the character of goods it services.)

N. L. R. B. v. Hopwood Retinning Company, 98 Federal 2nd 97 (CCA 2). In this case the respondent did more than merely collect and clean ice cream containers, but it retinned and resoldered same and bought and sold others, thus transferring title to the goods. (White Swan Company does not buy or sell articles of laundry, merely cleans and presses them.)

N. L. R. B. v. National New York Packing & Shipping Company, 86 Federal 2nd, 98. This Company acted as agent in shipments of national proportions to the many States. It participated in the continuity of transit from buyer in one State to seller in another State. Title to the goods changed. The form of the packaged articles changed. The articles themselves were already moving in interstate commerce from State to State. (White Swan Company is agent for no one, it does not act as an agent in interstate shipments, nor does it change the character, substance or transfer any title to goods, nor participates in the change of substance or character of the goods.)

Kansas City Railway Company v. McAdow, 240 U. S. 51. Note, that the question of jurisdiction was not raised in this case.

Spokane & Inland R. Company v. U. S., 241, U. S. 344. This case has no real application, since from time immemorial railroads have always been considered in interstate commerce by the very nature of their operations, but laundries have not been so considered.

Ellis v. Inman Poulsen & Company, 131 Federal 182. Note, That in this case, the goods which defendants dealt in were bought and sold in interstate commerce. Title passed in the goods. (White Swan Company does not buy or sell in interstate commerce, or even in intrastate commerce. It merely renders a service.)

Fehr Baking Company v. Bakers Union, 20 Federal Supp. 691. Note, In this case bakery products were manufactured in one State and were sold in another State. (White Swan Company does not buy and sell, it merely renders a service.)

CONCLUSION.

It is respectfully submitted that the questions certified by the Circuit Court of Appeals for the Fourth Circuit should be answered in the negative.

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28 St. Nicholas Building, Pittsburgh, Pa.

March, 1941.

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SUPREME COURT OF THE UNITED STATES.

No. 529.—October Term, 1940.

National Labor Relations Board vs. White Swan Company. } On Certificate from the United States Circuit Court of Appeals for the Fourth Circuit.

[March 31, 1941.]

Mr. Justice Douglas delivered the opinion of the Court.

A certificate from the Circuit Court of Appeals for the Fourth Circuit submitted pursuant to § 239 of the Judicial Code (28 U. S. C. § 346) is as follows:

This is a petition for enforcement of an order of the National Labor Relations Board, which directed the White Swan Company, a corporation of Wheeling, West Virginia, engaged in the operation of a laundry and dry cleaning business, to cease and desist from certain unfair labor practices and to offer employment with back pay to certain employees held to have been discharged because of union affiliation and activities. The findings of the Board with respect to the unfair labor practices and discriminatory discharge of employees are sustained by substantial evidence; but a question has arisen, as to which the members of the Court are divided and in doubt, with respect to the jurisdiction of the Board in the premises.

The respondent, White Swan Company, operates a combined laundry and dry cleaning establishment in the city of Wheeling, West Virginia. While certain of its supplies are obtained from without the state, the volume of the interstate business thus involved is not sufficient, in our opinion, to bring the business within the jurisdiction of the Board. The record shows that these supplies consist of soap, bluing, bleach, solvent, coal, water, paper, tape and padding, and that respondent's purchases thereof during 1938 amounted to $38,333.15, of which $10,810.90 came from without the state. Respondent, however, operates delivery trucks in Ohio as well as in West Virginia, three of the delivery routes from its plant being in Ohio and eleven in West Virginia. The business involved is necessarily of a purely local character, as the record shows that a radius of fifteen miles is the practical limit for a laundry or dry-cleaning business in this territory. The fact that business is done in Ohio outside the state in which respondent's laundry is located, results from the fact that this purely local business is located in a city on a state line. Respondent transports garments in its trucks from those of its customers who reside in Ohio to its plant in West Virginia to be serviced, and then after servicing returns the garments in its trucks to the customers. Approximately 12.93 per cent of its gross income for 1938 was derived from this source. In addition thereto, approximately 5 per cent of its gross income during 1938 was derived from the servicing of garments which persons not in its employment collected in Ohio, brought to its plant for servicing and delivered in Ohio after they had been serviced. Respondent's total gross income in 1938 was $128,752.96. The total income

from the business obtained from persons in Ohio during this period was $28,088.43.

We recognize that the collection and delivery of garments across state lines, as above described, constitutes interstate commerce. We are advertant, however, to the admonition of the court that in applying the act we are to bear in mind "the distinction between what is national and what is local in the activities of commerce." *N. L. R. B.* v. *Jones & Laughlin* (301 U. S. 1, 30). And although the letter of the National Labor Relations Act may cover such collections and deliveries in interstate commerce as are here involved, the question arises whether a proper interpretation of the Act, in view of the intent of Congress, would include them. Cf. *United States* v. *Sorrells*, 287 U. S. 435, 446. We are divided and in doubt as to whether such collection and delivery, which results from the fact that business of a local character, such as a laundry, is located on a state line, is sufficient to bring such business within the jurisdiction of the Board under the National Labor Relations Act. To so hold would be to bring under the jurisdiction of the Board a great variety of businesses of purely local character simply because they maintain a delivery service in cities located on state lines. As there are many such cities in the United States, the question seems to us one of sufficient importance to justify us in certifying it to the Supreme Court so that it may be definitely settled.

Being divided and in doubt, therefore, this Court respectfully certifies to the Supreme Court of the United States, for its instruction and advice, the following questions of law, the determination of which is indispensable to a proper decision of the case.

1. Should the National Labor Relations Act be interpreted as having application to a business of purely local character, such as a laundry, merely because such business is located in a city on a state line and derives a substantial portion of its income from business which involves collections or deliveries of articles in a state other than that in which the business is located?

2. Where a local business, such as a laundry, is located in a city on a state line, and is not engaged in interstate commerce, except in so far as it may collect articles to be serviced and may make deliveries to customers living across the state line, is such business, by reason of such collections and deliveries, deemed engaged in "commerce" within the meaning of Subsection 6 of Section 2 of the Act of July 5, 1935, ch. 372, 29 U. S. C. A. 152(6), so that an unfair labor practice on its part would be an unfair labor practice "affecting commerce" within the meaning of Subsection 7 of said section (29 U. S. C. A. 152(7)) and Subsection (a) of Section 10, 29 U. S. C. A. 160(a)?[1]

The certificate must be dismissed.

By § 10(a) of the National Labor Relations Act (49 Stat. 449, 453; 29 U. S. C. § 160(a)) the Board is empowered "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce." The term "affecting commerce" is defined in § 2(7) as "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." And "commerce" by § 2(6) is defined so

[1] The court denied a motion made by the Solicitor General to amend the certificate by embodying the purchase of supplies in interstate commerce as well as the collections and deliveries.

as to include "trade, traffic, commerce, transportation, or communication among the several States." On a review of an order of the Board in a Circuit Court of Appeals the "findings of the Board as to the facts, if supported by evidence, shall be conclusive." § 10(e).

The questions do not focus "the controversy in its setting." *Lowden* v. *Northwestern National Bank & Trust Co.*, 298 U. S. 160, 163. From the certificate we do not know on what grounds the Board based its jurisdiction—that the business was "in commerce" or that it was embraced within the other categories described in § 2(7) of the Act. The terms "business of purely local character" and "local business" are meaningful for purposes of § 10(a) of the Act only in light of specific findings of the Board. To answer the questions we would have to make a supposition as to the sense in which the Board made its finding under § 10(a) that the unfair labor practices were "affecting commerce". The necessity of making that supposition reveals the hypothetical and abstract quality of the questions. And the fact that on the whole record the answer might be clear whichever the theory of the Board's findings does not make the questions any the less defective. The reviewing court is passing on the validity of a specific order of the Board. Since the questions certified do not reflect the precise conclusions of the Board and the precise findings on which those conclusions were based, they necessarily have an "objectionable generality". See *United States* v. *Mayer*, 235 U. S. 55, 66; *White* v. *Johnson*, 282 U. S. 367, 371; *Triplett* v. *Lowell*, 297 U. S. 638, 648; *Atlas Life Ins. Co.* v. *W. I. Southern, Inc.*, 306 U. S. 563, 571; *Pflueger* v. *Sherman*, 293 U. S. 55, 57, 58. And if, in this case, they did reflect those conclusions and findings, they would be defective as calling for a "decision of the whole case". *News Syndicate Co.* v. *New York Central Railroad Co.*, 275 U. S. 179, 188.

Dismissed.

A true copy.

Test:

Clerk, Supreme Court, U. S.